

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 210 of 2018

Present: Hon'ble Mr.Gokul Chandra Pati, Member (A)

Dr.Bikartan Das, aged about 60 years, S/o Late Bimbadhar Das, Village – Bhagi Chakurai, PO – Dhoba Chakurei, PS- Basta, Dist.- Balasore, at present working as Assistant Director (AY), Central Ayurvedic Research Institution for Hepatobiliary Disorder, Bhartpur, Bhubaneswar – 751029, Dist.- Khurda.

.....Applicants

VERSUS

1. Union of India, through Secretary to Government, Ministry of Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homoeopathy (AYUSH), Government of India, New Delhi, Ayush Bhawan, B-Block, GPO Complex, New Delhi – 110023.
2. Central Council for Research in Ayurvedic Sciences, Ministry of AYUSH, government of India, 61-65 Institutional Area Opposite 'D' block, Janakpuri, New Delhi- 110058, represented through its Director General.
3. Director General, Central Council for research in Ayurvedic Sciences, Janakpuri, New Delhi- 110058.
4. Director, Central Ayurveda Research Institute for Hepatobiliary Disorders, Bharatpur, Bhubaneswar – 751029.

.....Respondents

For the applicant : Mr.D.P.Dhalsamant, Counsel

For the respondents: Mr.C.M.Singh, Counsel

Heard & reserved on: 21.10.2020

Order on :02.11.2020

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

The applicants has filed the present Original Application (in short OA) under section 19 of the Administrative Tribunals Act, 1985, seeking the have prayed for the following reliefs:-

“The Hon'ble Tribunal may be graciously pleased to admit the Original Application, call for the records and issue notice to the Respondents and upon hearing the parties declare the impugned letter of clarification of Ministry of AYUSH dtd. 31.10.2017 as under Annexure-4 Series and the letter dtd. 04.04.2018 under Annexure-3 directing the Applicant to retire on 30.04.2018 on attaining age of 60 years, to be illegal, arbitrary unreasonable and discriminatory and quash the same and direct the Respondents to allow the Applicant to continue in the service upto 65 years as per amended rules.”

Contentions in the OA

2. The facts as per the OA in brief are that he is an AYUSH doctor who was to superannuate on attaining the age of 60 years when the Fundamental Rules (in short FR) 56 was amended w.e.f. 5.1.2018 (Annexure-A/1), enhancing the age of superannuation of AYUSH doctors to 65 years. Applicant submitted a representation dated 22.3.2018 (Annexure-A/2) for continuation of his service till 65 years. But he was served with the order dated 4.4.2018 (Annexure-A/3) directing him to retire on 30.4.2018 on attaining the age of 60 years. Being aggrieved by order at Annexure-A/3, he has filed this OA.

3. Main grounds advanced in the OA in favour of the claim are as under:-

(i) The applicant is an AYUSH doctor at present working as Assistant Director at Central Ayurvedic Research Institute for Hepatobility Disorder, Bhubaneswar (in short CARI) under the Central Council for Research in Ayurvedic Services (in short 'Council') which is an autonomous body under the Ministry of AYUSH (respondent no.1). As per the bye-laws 34 and 35 of the Council, the retirement age of the employees of the Council will be as per the rules governing the employees of Government of India as amended from time to time. Hence, the applicant's retirement age was 60 years.

(ii) Vide notification dated 5.1.2018 (A/1), the FR-56 has been amended enhancing the superannuation age of the AYUSH doctors to 65 years, which is also applicable to the employees of the Council like the applicant.

(iii) A clarification letter dated 31.10.2017 (Annexure-A/4 series) was issued by the Ministry of AYUSH and circulated by the letter dated 25.1.2018 mentioning that the Cabinet decision regarding retirement age is applicable to AYUSH doctors working directly under the Ministry and it is not applicable to the autonomous bodies like the Council. Such letter dated 31.10.2017 is discriminatory and against public policy in view of the rule 34 and 35 of the bye-law of the Council.

(iv) The interim order passed by the Principal Bench of the Tribunal in OA No. 335/2018 (Annexure-A/50 and order (Annexure-A/6) of Hon'ble High Court of Jammu and Kashmir have been relied by the applicant in the OA.

Prayer for interim relief

4. The applicant's prayer for interim relief was to stay the order dated 4.4.2018 under Annexure-A/3 and to allow the applicant to continue in service. When the matter was considered for admission on 17.4.2018, the respondents were directed to file reply on the said interim prayer to stay the order of retirement of the applicant. The applicant, being aggrieved by the order dated 17.4.2018 of

the Tribunal, filed a writ petition W.P. (C) No. 6663/2018 which was disposed of by Hon'ble High Court with the following directions:-

“...Since the Original Application is pending before the Tribunal, without expressing any opinion on the merits of the case, we dispose of this Writ Petition with an observation that since the Doctors, who are similarly situated are continuing after attending the age of 60 years, let the petitioner continue in service and notice of superannuation under Annexure-3 shall remain stayed till disposal of the Original Application...”

Contentions in the Counter filed by respondents

5. Counter was filed on 29.6.2018 advancing the following grounds to oppose the OA:-

(i) The Council is an autonomous body registered under the Society Registration Act, 1860 and major decisions are taken by the Governing Body of the Council which is mandated to promote research on scientific lines in Ayurvedic Sciences. The activities are carried out through 30 Institutes/Centers/Units located at different parts of the Country.

(ii) Though the applicant is an AYUSH doctor, but he was appointed as as Research Officer under the Council. The Council is meant for research activities and not for day to day patient care. The purpose of the Cabinet decision to enhance the superannuation age is for 'better patient care and proper academic activities including health programmes'. The decision is applicable to the AYUSH doctors working directly under the Ministry of AYUSH and working in CGHS dispensaries and it cannot be made applicable to the Research Officers working under the Council. The letter dated 24.11.2017 by the respondent no.1 is not addressed to respondent no.2.

(iii) As per the clarification dated 31.10.2017, the decision for enhancement of retirement age excluded the Council which does not face shortage of research officers. The retirement age of the applicant is governed as per the FR-56(a), copy of which is enclosed at Annexure-R/4 to the Counter.

(iv) The respondents have cited the judgment of Hon'ble Karnataka High Court in WP No. 42833-43/1999 in which it was held that equality under Article 14 cannot be claimed by an employee comparing to another employee who is governed by different set of rules. The rules applicable to AYUSH doctors working directly under the Ministry are different from the rules applicable to the applicant as research officer under the Council.

Rejoinder

6. Rejoinder has been filed by the applicant mainly reiterating the stand taken in the OA that the amended FR-56 enhancing the retirement age will also be applicable to the employees of the Council as per the rule 34 and 35 of the Council's bye-laws. It is also averred that as per the notification dated 11.8.2018 (Annexure-A/7 of the Rejoinder), the FR-56b has been amended further providing that the superannuation age of the AYUSH doctors working under the Ministry of AYUSH will be 62 years unless they exercise option of posting to teaching, clinical, patient care, implementation of health programmes, public health programmes etc. and they so opt, then the retirement age will be 65 years. It is stated that CARI (respondent no.4) under which the applicant is posted, is having OPD services with 50 bedded IPD facilities duly supported by different sections like Bio-chemistry, Pathology, Mini Pharmacy etc. It is also stated that during 2014-15, 17683 patients were attended in the OPD, 310 patients in IPD and Panchakarma therapy was provided to 11611 patients in OPD and IPD. An amount of Rs. 2,89,845/- was generated through the patients. Hence, it is averred that the nature of duties of Research Officers including the applicant is more clinical. Copy of the Annual Report has been enclosed at Annexure-A/9.

Reply to Rejoinder

7. Reply to Rejoinder has been filed by respondents stating that the provisions of FR-56(a) is applicable to the applicant as the exceptions carved out in the said rule are not applicable to the Council as it has not been approved by the Council till now. Reference to the notification dated 11.8.2018 (Annexure-A/7 to the Rejoinder) has been made to contend that the enhanced retirement age is applicable to the AYUSH and working under the Ministry of AYUSH. The letter dated 31.10.2017 has specifically excluded the applicability of the decision to the Council.

8. During pendency of the OA, one Dr. Ashok Kumar Panda has filed the MA No. 424/2020 on 25.8.2020 with a prayer to intervene in the OA, stating that due to applicant's continuance in the post of Assistant Director under respondent no.4 after superannuation age, the interest of the intervener is adversely affected since he was posted to Ranikhet on promotion to Assistant Director since no post was vacant in Bhubaneswar due to continuance of the applicant after retirement. Since the OA was at the stage of final hearing, no decision was taken in the MA No. 424/2020 for intervention.

9. The applicant has also filed Additional Rejoinder which was objected to by the respondents' counsel at the time of hearing since a number of new documents, not included in the pleadings, have been filed by the applicant.

However, learned counsel for the respondents did not have any objection if the judgments enclosed with the Additional Rejoinder are taken into consideration for adjudication of the OA.

Submissions by the parties

10. Learned counsel for the applicant was heard. Reiterating the stand advanced in the OA, learned counsel submitted that the notification of the amended FR at Annexure-A/1 and A/7 did not have any provision to exclude the employees of the Council or to include only those AYUSH doctors who were directly working under the Ministry of AYUSH. He also referred to the Presidential order dated 24.11.2017 (Annexure-R/2) which did not exclude the employees of autonomous institutions under the Ministry of AYUSH like the Council from the purview of the said order. It was submitted that in a similar dispute in OA No. 2712/2016, the OA was allowed by the Principal Bench of the Tribunal, which was upheld by Hon'ble Delhi High Court. It is further stated that in Counter, reliance was placed on the letter dated 31.10.2017 clarifying that the decision to enhance the retirement age will not be applicable to the applicant and the stand is not sustainable in view of the amendment to FR-56 vide notifications at Annexure-A/1 and A/7 and the clarification dated 31.10.2017 cannot supersede the provisions of the amended FR-56 or the Presidential Order at Annexure-R/2.

11. Learned counsel for the applicant distinguished the judgments cited by the respondents by stating that in those judgments the claim for enhanced retirement age was not accepted since there was no treatment of patients. It was pointed out that as enclosed with the Rejoinder at Annexure-A/9, the Annual Report of CARI, Bhubaneswar under which the applicant is posted is carrying out treatment of patients in OPD and IPD. Hence, it was argued that the present applicant's case is different from the cases cited on behalf of the respondents. The observations in the judgment in OA No. 335/18 by the Principal Bench and OA No. 926/19 of Hyderabad Bench of the Tribunal were referred to by learned counsel.

12. Learned counsel for the applicant has filed a written note reiterating his oral submissions. It is stated that under the rule 35 of the Bye-law of the Council, the provisions of the FR &SR as amended from time to time will apply mutatis mutandis to the Council employees and hence, the FR-56(bb) will also be applicable to the applicant. It is stated that the applicant has been allotted the OPD and IPD duty under respondent no.4. It is stated that in OA No. 335/18, it was observed that the applicant in that OA was not entrusted with any treatment work. This is not applicable to present OA since as per Annual

Report at Annexure-A/9, thousands of patient are treated in the Institute in OPD and IPD facilities. Similarly, the OA No. 903/19 before Hyderabad Bench, was dismissed on the basis of the order in OA No. 335/2018. The said order is not applicable to present case since the rule 35 of Bye-law has not been taken into consideration by Hyderabad Bench and the OA was dismissed on the ground that the applicant was not involved in the patient care, which is not the case for the present applicant. Following judgments are enclosed in the written note submitted by the applicant's counsel:-

- (i) The Rajasthan State Industrial Development and Investment Corporation & Anr. vs. Diamond and Gem Development Corporation Ltd. & Anr. reported in AIR 2013 SC 1241
- (ii) Premalata Panda vs. State of Odisha & another, reported in 2015 SCC OnLine Ori 243

13. Learned counsel for the respondents was heard. He reiterated the points made in the Counter to oppose the OA and submitted that all the issues have been dealt by Hyderabad Bench in order dated 4.9.2020 passed in OA No. 926/2019, copy of which has been filed by him. He also filed written notes of arguments. It is stated that the FR-56(bb) is applicable for specific categories of doctors in which the applicant is not included. The doctors under the Ministry are recruited through UPSC where as the applicant was recruited by the Council. For retirement the specific clause 33 of the Bye-law is applicable. Judgments in OA Nos. 797/18 (Chandigarh Bench), 1121/18 (Principal Bench), 926/19 (Hyderabad Bench) and 904/19 (Principal Bench) are cited in the written note, besides referring to the judgments in the case of Union of India & anr vs. Association of the employees of Indian Institute of Mass Communication (Regd) & ors, Indian Institute of Technology vs. Raja Ram Verma & Ors.

Discussion

14. Having regard to the submissions by both the parties, the question that is to be decided in this case is whether the provisions of the amended FR-56(bb) is applicable to the applicant's age of superannuation as contended by the applicant or it is to be governed by FR-56(a) as contended by the respondents. A related question is about the validity of the letter dated 31.10.2017 which has been circulated by the Council in their letter dated 25.4.2018 (Annexure-A/4 series of the OA). The relevant notification G.S.R. 767(E) dated 11.8.2020 provides as under:-

**“MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS
(Department of Personnel and Training)
NOTIFICATION**

New Delhi, the 11th August, 2018

G.S.R. 767(E).—In exercise of the powers conferred by the proviso to article 309 of the Constitution, the President hereby makes the following rules further to amend the Fundamental Rules, 1922, namely :—

1. **Short title and commencement.**—(1) These rules may be called the Fundamental (Second Amendment) Rules, 2018.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Fundamental Rules, 1922, in rule 56, for clause (bb), the following shall be substituted, namely:-

“(bb) (i) The age of superannuation in respect of the doctors belonging to—

(i) Central Health Service;

(ii) Indian Railways Medical Service;

(iii) AYUSH and working under the Ministry of AYUSH;

(iv) Civilian doctors under the Directorate General of Armed Forces Medical Service;

(v) Medical Officers of the Indian Ordnance Factories Health Service;

(vi) Dental Doctors under the Department of Health and Family Welfare;

(vii) Dental doctors under the Ministry of Railways; and

(viii) General Duty Medical Officers, Specialist Grade doctors and Teaching Medical Faculty working in Bhopal Memorial Hospital and Research Centre,

shall be sixty-two years unless they exercise the option of posting to Teaching, Clinical, Patient Care, Implementation of Health programmes, Public Health programmes and functions including advisory and consultancy depending on their expertise and experience, as decided by the competent authority in the concerned Ministry or Department from time to time, in case they desire to continue in their service upto the age of sixty-five years:

Provided that the age of superannuation in respect of the doctors belonging to the General Duty Medical Officers sub-cadre of Central Armed Police Forces and Assam Rifles and Specialist Medical officers of Central Armed Police Forces and Assam Rifles shall be sixty-five years.

(ii) The serving doctors belonging to the services referred to in sub-clause (i) who have either already attained the age of sixty-two years or attaining the age of sixty-two years within six months from the date of publication of these amendment rules in the Official Gazette, may exercise their option in regard to their posting to Teaching, Clinical, Patient Care, Implementation of Health programmes, Public Health programmes and functions including advisory and consultancy as specified in sub-clause (i), within a period of thirty days from the date of the commencement of the Fundamental (Second Amendment) Rules, 2018.

(iii) The serving doctors who fail to exercise the option in regard to their posting to Teaching, Clinical, Patient Care, Implementation of Health programmes, Public Health programmes and functions including advisory and consultancy as specified in sub-clause (i), within the period specified in subclause (ii), shall be superannuated from their service on attaining the age of sixty-two years or on expiry of a period of thirty days from the date of the commencement of the Fundamental (Second Amendment) Rules, 2018, whichever is later. ”

15. The applicant claims that the above provisions of FR-56(bb) will apply to the applicant who is admittedly an employee of the Council in view of the rule 35 of the Bye-law of the Council by which the provisions of the FR and SR will apply to the Council employees mutatis mutandis. The respondents, on the other hand, have opposed the claim on the ground that the said provisions are not applicable to the Council employees in view of the clarification of the Ministry dated 31.10.2017 and in view of the orders passed by the Tribunal in similar cases. The applicant has impugned the letter dated 31.10.2017 on the ground that such clarification cannot override the decision of the Cabinet and the provisions of the FR-56 as amended supra.

16. The Fundamental Rules notified under Article 309 of the Constitution of India is applicable to the employees working directly under Government of India. Its applicability to the employees of the Council is because of the provisions of the Bye-law in rule 34 and 35 which have been cited by the applicant in para 4.5 of the OA which is not contradicted in the Counter. This

issue was considered by Hyderabad Bench of the Tribunal vide order dated 4.9.2020 in OA No. 926/2019 in which it was observed asunder:-

“ Clause 34 of the bye-law makes it crystal clear that the Governing Body has to take a decision in regard to the enhancement of the retirement age. The Governing body has no necessity to take a decision in the context of the Ministry of AYUSH, Govt. of India having made it clear that enhancement of retirement age is not applicable to an autonomous body like CCRAS. Therefore, the G.O.I. rule of not extending the enhancement of retirement age to CCRAS compliments the clauses 35 & 47 of the bye-laws. We do not find any error in the decision taken by the respondents in terms of the bye laws.”

17. However, the applicant's counsel argues that the order dated 4.9.2020 supra is not applicable to the present OA since it did not consider the rule 35 of the bye-laws, which states that the FR, SR and GFR as amended from time to time shall apply mutatis mutandis to employees of the Council. We are unable to agree with such argument since being a rule about general applicability of FR, SR and GFR to the Council employees, it will be subject to the provision specific to the rule 34 governing superannuation of the employees of the Council. There is nothing in the rule 35 of the bye-law that it will have an overriding effect on the rule 34 regarding retirement age. The rule 47 of the bye-law makes it clear that for the matters not specifically provided in the bye-laws, the rules applicable for government employees will apply. But since there is a specific provision regarding superannuation in rule 34, the rules governing government servants in respect of superannuation will not be applicable to the employees of the Council unless it is in accordance with the rule 34 of the bye-laws. Hence, the objection to the findings of Hyderabad Bench of the Tribunal in OA No. 926/2019 in this regard cannot be accepted.

18. The applicant has challenged the clarification letter issued by the Ministry of AYUSH dated 31.10.2017 (Annexure-A/4 series) on the ground that the clarification cannot supersede the Cabinet decision or the provisions of the statutory rules like FR-56(bb). But there is nothing in the Cabinet resolution in question and in the amended FR-56(bb) to show that these decisions are applicable to the employees of autonomous institutions. The assumption of the applicant that the FR-56 as amended from time to time is automatically applicable to the Council employees is not correct since it is subject to the provisions of the rule 34 and 35 of the Bye-laws. Hence, prima facie there is nothing wrong with the clarification in letter dated 31.10.2017 which cannot be stated to be overriding the Cabinet decision in question and the objection to the letter dated 31.10.2017 on that ground is not sustainable.

19. It is noticed that the aforesaid letter dated 31.10.2017 was circulated by the Council in its letter dated 25.1.2018 after issue of the amendment to FR-56

dated 5.1.2018 (Annexure-A/1). This implies that the Council, which is admittedly the employer of the applicant, has consciously accepted the clarification of the Ministry issued in letter dated 31.10.2017 and issued it for circulation among the officers of the Council. We take note of the fact that the applicant has not challenged the letter dated 25.1.2018 of the Council in para 8 of the OA, though he has challenged the letter dated 31.10.2017 of the Ministry. Further, there is nothing in the pleadings of the applicant to show that the amended FR-56(bb) is applicable to the employees of the Council, except for citing the provisions of the bye-laws as discussed earlier.

20. It is noticed that the respondents' counsel has enclosed a modified version of the bye-laws in which earlier rule 34 has been numbered as 33 with the contents modified from what was cited in para 4.5 of the OA. The modified version of the Bye-laws was checked up from the website of the Council <http://www.ccras.nic.in/content/bye-laws> which states as under:-

“SUPERANNUATION

33. The rules governing the retirement of employees of the Government of India as amended from time to time shall apply to the employees of the Central Council as adopted by the Governing Body. Provided that an employee can be retained in service after prescribed age of superannuation, with the prior approval of the Central Government if he/she continues to be physically fit and efficient and it is in the interest of the Central Council to retain him/her in service.
34. The Fundamental and Supplementary Rules and General Financial Rules of Government of India as amended from time to time shall apply *mutatis mutandis* to employees of the Central Council.”

It is seen from the above that earlier rule 34 has been renumbered as rule 33 in which it is clearly provided that the rules governing to retirement of government employees will be applicable to the employees of the Council as adopted by the Governing Body. It means that unless Governing Body adopts the changes in rules for retirement of government servants, such changes are not automatically applicable to the employees of the Council. In the version mentioned in para 4.5 of the OA, the provision of the rule 34 is:

“34. The rules governing the retirement of employees of the Government of India as amended from time to time or as desired by the Governing Body shall apply to the employees of the Central Council.....”

21. Even if the version of the rule 34 of the bye-laws as stated in para 4.5 is considered in view of the fact that it has not been contradicted by the respondents in the Counter, the rules relating to retirement age of Government servants as amended from time to time or as desired by Governing Body, will be applicable to the employees of the Council. In this case, the clarification given by the Ministry in letter dated 31.10.2017 has been circulated by the Council as revealed from its letter dated 25.1.2018 (Annexure-A/4 series) and

acceptance of such decision of the Ministry by the Council has not been disputed or challenged by the applicant in this OA. The letter dated 25.1.2018 read with the rule 34 supra will imply that the applicability of the amended provisions of the FR-56 for the deciding retirement age of the employees of the Council will be subject to the clarification in letter dated 31.10.2017 that the enhanced retirement age will not be applicable to the employees of the Council.

22. We take note of the principles laid down by Hon'ble Apex Court for challenge of a policy decision in the case of **Delhi Development Authority & another vs. Joint Action Committee, Allottee of SFS Flats & others**, reported in 2007 (14) SCALE 507, in which it is held :-

“59. An executive order termed as a policy decision is not beyond the pale of judicial review. Whereas the superior courts may not interfere with the nitty gritty of the policy, or substitute one by the other but it will not be correct to contend that the court shall like its judicial hands off, when a plea is raised that the impugned decision is a policy decision. Interference therewith on the part of the superior court would not be without jurisdiction as it is subject to judicial review.

60. Broadly, a policy decision is subject to judicial review on the following grounds :

- (a) if it is unconstitutional;
- (b) if it is de hors the provisions of the Act and the Regulations;
- (c) if the delegatee has acted beyond its power of delegation;
- (d) if the executive policy is contrary to the statutory or a larger policy.”

In the present OA, the challenge of the policy decision of the Ministry as per the letter dated 31.10.2017 has to be as per the ratio of the above judgment. The challenge to the letter on the ground that it violated the Cabinet decision or it violated the FR-56(bb) does not sustain as discussed in paragraph 18 supra. No other valid ground has been furnished to challenge the said policy decision of the Ministry.

23. From the discussions in the preceding paragraphs, we are of the considered view that the challenge of the Applicant to the letter 31.10.2017 has no force at all and it is bound to fail.

24. The applicant's counsel has argued that the applicant had been entrusted with the duty pertaining to treatment of the patient as revealed from the Annual Report at Annexure-A/9 of the Rejoinder. Such contentions have been denied by the respondents. But even if the contentions are accepted, it will not negate the decision taken in the letter dated 31.10.2017 of the Ministry which was accepted by the Council in its letter dated 25.1.2018. Hence, such contention is of no assistance to the applicant.

25. Coming to the citations furnished by the applicant's counsel in his written note, it is seen that in the case of Rajasthan State Industrial Development and

Investment Corporation (in short RSIDIC), the dispute pertained to cancellation of leased land by RSIDIC for non-completion of construction work by the respondent company within the time as stipulated in the agreement and whether the terms of contract can be enforced through writ jurisdiction. Further, as discussed earlier, the rule 34 of bye-laws is applicable in this case. Hence, the cited judgment will be of no assistance to the applicant.

26. In the case of Premalata Panda (supra), Hon'ble High Court, in a dispute regarding applicability of enhanced retirement age as decided by Government to the employees of a statutory authority, has held as under:-

“15. Taking into consideration the ratio decided in Harwindra Kumar (Supra) and Chairman, Uttar Pradesh Jal Nigam (supra) and various orders passed by this Court as mentioned supra, since there is an amendment to Rule 71(a) of the Code enhancing the age of superannuation of the State Government employees from 58 to 60 years, that will ipso facto apply to the employees of the CDA by virtue of the resolution passed in Annexure-B/2 and no further approval is required by the Administrative Department, unless the CDA frames its own Rules regulating the service condition of its employees where the age of superannuation of the employees is to be incorporated. In absence of the same, any change in service Code with regard to the age of superannuation in respect of the employees of the State Government will also apply to the employees of the CDA.....”

In the cited case, the CDA had recommended to enhance the retirement age to its employees to 60 years and sent the proposal to Government of Odisha for approval, which was awaited. It was held that no approval is required for enhancing the retirement age of the employees of CDA in view of a Resolution of Government already existing. However, such automatic extension is subject to the CDA framing rules for its own employees. In the present OA, the Council accepted the clarification of the Ministry of AYUSH regarding non-applicability of enhanced retirement age to the employees of the Council and circulated the same in its letter dated 25.1.2018. There is no law decided in the cited judgment that the Council is not empowered to adopt the appropriate rule for deciding retirement age of its employees.

27. In the Additional Rejoinder, the applicant has filed copy of some judgments which can be considered. In OA No. 2712/2016 with other similar OAs, the Principal Bench of this Tribunal allowed the prayer for enhanced retirement age to 65 years. The applicants in those OAs were AYUSH doctors of the North and East Delhi Municipal Corporations for which the applicable service conditions clearly provided parity with the service conditions of government servants. Further, it was observed by the Tribunal that as per clarification dated 30.8.2016, the Ministries can take decision about applicability of the enhanced retirement age to the autonomous institutions. However, in the present OA, the Ministry of AYUSH had given a clarification in letter dated

31.10.2017 that the enhanced retirement age will not be applicable to Council employee. Hence, the cited judgment is distinguishable.

28. The respondents' counsel has filed a copy of the order dated 30.8.2019 in OA No. 797/2018 of Circuit Bench at Jammu (Dr. Krishna Kumari vs. Union of India & Others) in which the applicant was an employee of the Council like the applicant in present OA. In OA No. 797/18, the applicant had also claimed that while working as Assistant Director, she was also doing clinical work. In that case, it was held that the "whatever work is done in dealing with patients would be performed with a view to furthering the goal of research activities related to patients would be performed....." Then following the decision of the Tribunal in the case of Dr. Salma Khatoon in OA No. 335/18, the OA was dismissed.

29. In view of our finding that the challenge of the applicant to the letter dated 31.10.2017 of the Ministry of AYUSH has no force, other grounds advanced by the applicant cannot sustain. The objections raised by the learned counsel for the applicant about applicability of the order dated 4.9.2020 passed by Hyderabad Bench in OA No. 926/2019 on the ground that in the present OA, clinical duty of the applicant has been demonstrated, cannot be accepted. As discussed in paragraph 16 of this order, it was held in the order dated 4.9.2020 that due to the instructions of Government of India, the enhancement of retirement age for AYUSH Doctors working under the Ministry of AYUSH can not be extended to the employees of the Council in spite of the rule 34 and 35 of its Bye-laws. We are in respectful agreement with the said findings in the order dated 4.9.2020 of Hyderabad Bench in the light of the discussions in the preceding paragraphs of this order.

Conclusion

30. In the circumstances, by following the order dated 4.9.2020 of Hyderabad Bench passed in OA No. 926/2019 (Dr. Ala Narayana vs. Union of India & Others), we answer the question framed in paragraph 14 supra about applicability of the amended FR-56(bb) to the applicant in negative and against the applicant's contentions and hold that the applicant has failed to justify any interference of this Tribunal in the matter. The OA is accordingly devoid of merit and hence, it is dismissed. There will be no order as to cost.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)